

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795		Hearing Date/Agenda Number P.C. 02/12/03 Item. 3.g.
		File Number CP 02-043
		Application Type Conditional Use Permit
		Council District 6
		Planning Area West Valley
		Assessor's Parcel Number(s) 274-43-074

STAFF REPORT

PROJECT DESCRIPTION		Completed by: Erin Morris
Location: southwest corner of Forest Avenue and North Monroe Street		
Gross Acreage: 16.33	Net Acreage: 16.33	Net Density: N/A
Existing Zoning: CG-Commercial General	Existing Use: Regional Shopping Center	
Proposed Zoning: No change	Proposed Use: Installation of (6) six wireless communications antennas and ancillary equipment on the roof of an existing shopping center	

GENERAL PLAN		Completed by: EM
Land Use/Transportation Diagram Designation Regional Commercial		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING		Completed by: EM
North: Commercial offices	CO Commercial Office	
East: Freeway (Interstate 880)	Regional Commercial	
South: Commercial and Attached Residential	CN Commercial Neighborhood, A(PD) Planned Development	
West: Shopping Center	Unincorporated	

ENVIRONMENTAL STATUS		Completed by: EM
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete	

FILE HISTORY		Completed by: EM
Annexation Title: Bascom No. 11		Date: 4/17/1952

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial	Date: _____ <input type="checkbox"/> _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation

OWNER	APPLICANT/DEVELOPER
Westfield America, Inc. C/O Westfield Corporation 11601 Wilshire Blvd., Suite 1200 Los Angeles, CA 90025	Victoria Wilcox NSA Wireless 119 Ash Grove Court San Jose, CA 95123

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Erin Morris

Department of Public Works
None received

Other Departments and Agencies
See attached memorandum from Fire Department

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Westfield Corporation, on behalf of AT&T Wireless, is requesting a Conditional Use Permit to allow the installation of six wireless communication antennas and associated equipment cabinets mounted on the roof of the Valley Fair Shopping Center located at the southwest corner of Forest Avenue and North Monroe Street (2400 Forest Avenue). The Zoning Ordinance requires a Conditional Use Permit (CUP) for wireless communication antennas located in the CG-Commercial General Zoning District. This CUP also functions as a Site Development Permit for the installation of improvements.

Surrounding uses include commercial uses on the north and west, Interstate 880 to the east, and mixed uses including commercial and high density residential to the south.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from antennas of the proposed type posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined that the reported interference resulted from cordless telephones and not from the antennas.

Project Description

The proposed project consists of the installation of (6) six, four-foot wireless communication antennas mounted to the roof of an existing shopping center. Four of the antennas will be mounted behind a proposed screen wall. The screen wall will extend 20 feet above the roof to a maximum total height of 57 feet 7 inches, and will be painted to match the existing building. Two of the antennas will be mounted on a steel pipe and placed in a location set back at least 20 feet from the edge of the roof behind an existing parapet. The associated equipment for all six antennas will be contained within three equipment cabinets, which will be installed behind an existing parapet located near the northeast corner of the building. The applicant has indicated that this facility will allow better coverage and increased system access and quality to the growing number of cellular telephone users in the area.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15303 which pertains to the new construction or conversion of small structures such as that which is proposed.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the subject site's General Plan Land Use/Transportation Diagram designation of Regional Commercial.

ANALYSIS

The primary issues analyzed for the project include; 1) Conformance to the Zoning Code and General Plan, and 2) Conformance to Council Policy 6-20, *Land Use Policy for Wireless Communications Antennas*.

Conformance to Zoning Code and General Plan Height Requirements

The General Plan height limit for non-residential buildings is 50 feet. However, there is an exception for structures, other than buildings, where substantial height is intrinsic to the function of the structures. The proposed antennas and roof screen extend to a height of 57 feet 7 inches and are screened from public visibility in conformance with the General Plan policy. The proposed antennas conform to the 65-foot height limit of the CG Commercial General Zoning District.

Conformance to the Council Policy for Wireless Communications Facilities

The proposed project conforms to key applicable elements of the Council Policy (see attached). The policy recommends building mounted antennas to be located a minimum of 50 feet horizontally from any property with a residential use or General Plan designation. The proposed antennas and equipment will be located on the roof of a large shopping center surrounded by a large parking lot, and therefore conform to the policy.

The Council Policy requires building or structure mounted antennas to be located so as to minimize visual impacts, and to be architecturally integrated into the structure. It also requires ancillary equipment to be screened. The proposed antennas and equipment cabinet will be screened from view by existing parapets and the proposed screen wall. The attached photosimulations illustrate the effectiveness of the screening. Based on this analysis, staff concludes that the proposed facility conforms to Council Policy 6-20.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Regional Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The General Plan height limit for non-residential buildings is 50 feet. However, there is an exception for structures, other than buildings, where substantial height is intrinsic to the function of the structures. The proposed antennas and roof screen extend to a height of 57 feet 7 inches and are screened from public visibility in conformance with the General Plan policy. The proposed antennas conform to the 65-foot height limit of the CG Commercial General Zoning District.
3. The City Council has adopted a Policy (6-20), entitled Land Use Policy for Wireless Communication Facilities. This Policy states that wireless communications facilities are allowed in Commercial General Plan designations. It also provides criteria for siting wireless communication antennas to address potential visual impacts, allowable height, and setbacks from residential uses.
4. The proposed antennas are surrounded by commercial uses and a freeway, and are located well over 50 feet from any residential use.
5. The antennas will be screened from view by existing parapets, and a new screen wall.
6. The proposed project consists of the installation of (6) six, four-foot wireless communication antennas mounted to the roof of an existing shopping center. Four of the antennas will be mounted behind a proposed screen wall. The screen wall will extend 20 feet above the roof to a maximum total height of 57 feet 7 inches, and will be painted to match the existing building. Two of the antennas will be mounted on a steel pipe and placed in a location set back at least 20 feet from the edge of the roof behind an existing parapet. The associated equipment for all six antennas will be contained within three equipment cabinets, which will be installed behind an existing parapet located near the northeast corner of the building.
 - a. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.

3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - b. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - c. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - d. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City

Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "AT&T Wireless Services 8SF-1065 Valley Fair Mall" dated April 1, 2002, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Lighting.** This permit allows no new on-site lighting.
4. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
5. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
6. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
7. *Construction Plans.* This permit file number, CP 02-043 shall be printed on all construction plans submitted to the Building Division.
8. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
9. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
10. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.

11. **Generators.** This permit does not include approval of emergency back-up generator on the subject site.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

CC: Victoria Willcox, AT&T Wireless, 651 Gateway Blvd., Suite 1500, South San Francisco, CA 94080
Jerry Epperson, Bechtel Communications, 2840 Howe Street Suite E, Martinez, CA 94553
Westfield America Corporation, 11601 Wilshire Blvd., Los Angeles, CA 90025

